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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

BRUCE WESTIN,

Defendant and Appellant.

B219853

(Los Angeles County  
Super. Ct. No. SA061160)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
James R. Dabney, Judge. Affirmed with directions.

Murray A. Rosenberg, under appointment by the Court of Appeal, for Defendant  
and Appellant.

No appearance for Plaintiff and Respondent.

Bruce Westin appeals from an order of the trial court denying his request to modify a restitution order. The only aspect of the order that appellant challenges is the trial court's order that he is not to serve any further subpoenas in the case without the express permission of the court.

Appellant was convicted in 2006 of committing vandalism causing damage over \$400 (Pen.Code, § 594, subd. (a)), and his conviction was affirmed on appeal. (*People v. Westin* (Aug. 18, 2008, B202964) [nonpub. opn.].) Thereafter, the trial court's order imposing restitution pursuant to Penal Code section 1202.4 in the amount of \$94,547.48 was affirmed on appeal. (*People v. Westin* (Sept. 30, 2008, B204594) [nonpub. opn.].)<sup>1</sup> The trial court subsequently denied without prejudice appellant's motion to modify the restitution order, advising appellant that he needed more information, such as the insurance policy. We affirmed the trial court's order. (*People v. Westin* (June 23, 2009, B213004) [nonpub. opn.].)

As stated in our previous opinions, the evidence at trial established that appellant was involved in an ownership dispute relative to a duplex in which he was living. In February 2006, Frederick Nitowski, the owner, began proceedings to evict appellant. During these proceedings, appellant threatened that the apartment was not going to be worth anything when he was done. In June 2006, after obtaining an eviction order from the court, Nitowski discovered that appellant had severely damaged the unit. At the time of trial, the damage to the premises was determined to be \$71,329. At a later restitution hearing, the court ordered appellant to reimburse the victim in the amount of \$94,547.48.

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<sup>1</sup> We additionally affirmed the trial court's order denying appellant's motion to terminate probation but remanded the matter to the trial court to correct its minute order to accurately reflect its orders relating to appellant's travel restrictions. (*People v. Westin* (April 10, 2009, B209234) [nonpub. opn.].)

On September 11, 2009, appellant filed another request to modify the restitution order pursuant to Penal Code section 1202.4, subdivision (f)(1). Appellant asserted that he needed to subpoena information regarding the insurance policy on the property in order to determine who was insured under the policy.

At an October 2, 2009, hearing on the motion, appellant stated that he needed the insurance contract in order to establish that he was an insured. Nitowski provided a copy of the insurance policy, but appellant contended that the policy was not the same as the “contract.” The court explained to appellant that the policy would establish who was insured under the contract and ensured that appellant received a copy of the policy.

At a hearing the following week, appellant reiterated his assertion that the policy was not the contract and continued to argue that he was insured under the policy. The court reasoned, however, that appellant had not entered into a contract with the insurance company, was not mentioned in the contract, and had not made any payments toward the policy. Appellant agreed with the court that his argument that he was an insured was based solely on his unsupported assertion that some of the insurance payments were made by his mother. The court pointed out that Nitowski both made the payments to the insurance company and was named as the insured in the policy.

The court further stated that, even if appellant’s mother had made payments on the policy, those payments would not inure to appellant’s benefit. The court relied on *People v. Hamilton* (2004) 114 Cal.App.4th 932, 941-943, in which the court rejected a claim that the defendant’s restitution obligation should be offset by a settlement paid by the defendant’s mother’s insurer, reasoning, inter alia, that the defendant did not procure or maintain the insurance and had no contractual right to require payments to be made on his behalf.

After denying appellant’s motion to offset his restitution obligation by payments made by Nitowski’s insurer, the trial court ordered appellant not to serve “any subpoenas

under this case number without the express permission of the court.”<sup>2</sup> Appellant filed a notice of appeal.

After review of the record, appellant’s court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

On December 17, 2009, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. On January 13, 2010, appellant filed a supplemental brief, challenging only the trial court’s order not to serve any subpoenas in the case without the express permission of the court. On February 5, 2010, appellant filed a document, again asking this court to set aside the trial court’s order not to serve any subpoenas.<sup>3</sup>

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant has, by virtue of counsel’s compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

The minute order at page 10 of the Clerk’s Transcript should be corrected to reflect the trial court’s statement at the hearing that appellant is ordered not to serve any subpoenas “under this case number.” The minute order must be corrected to conform to the oral pronouncement of the court. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

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<sup>2</sup> The minute order omits the language limiting the court’s order to subpoenas “under this case number.”

<sup>3</sup> On February 8, 2010, we denied appellant’s January 19, 2010, motion to correct the trial court transcript. On February 19, 2010, we denied appellant’s request for oral argument.

### **DISPOSITION**

The trial court is directed to correct the minute order to conform to the oral pronouncement of the court that appellant is not to serve any subpoenas in this case. In all other respects, the judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P.J.

MANELLA, J.